

LAW OFFICE OF AMY JANE AGNEW

Honorable Loretta A. Preska
 Senior Justice, United States District Court
 Southern District of New York
 500 Pearl Street
 New York, New York 10007

USDC SDNY
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November 5, 2021

VIA ECF

Re: *Allen, et al. v. NYS DOCCS, et al.*, 19-cv-8173 (LP)(SN)
De Bene Esse Deposition of Intervenor and Putative Class Member Aditep White

Dear Judge Preska:

I write on behalf of Plaintiffs to respectfully request an Order allowing an *en bene esse* deposition of Aditep White pursuant to Fed. Rules Civ. P. 30(a)(2)(A) and 32(a)(4)(E). Though Defendants' counsel requested the Court's permission to take twenty-five depositions, they have not provided us with notices or dates. As of this writing, we have no idea which of our 220 putative class members Defendants will be deposing. Based on Mr. White's personal circumstances, Plaintiffs respectfully request that an de bene esse deposition be taken on November 16, 2021 for the purposes of preserving Mr. White's testimony for hearing or trial in this matter.

Mr. White is currently housed in the Wende Regional Medical Unit ("Wende RMU"), a hospital run by DOCCS that houses patients who cannot perform activities of daily living. Mr. White also has a pending Court of Claims action; Defendants' counsel in that action has noticed a deposition of Mr. White on November 16, 2021. I will be flying out to Buffalo to attend. As the Court may recall, this Court appointed a *guardian ad litem* for Mr. White -- his mother, Dr. Christine Michael. Subsequent to that order, this office represented Dr. Michael in an Article 81 petition in Erie County Supreme Court to name her as Guardian over Mr. White's person and

New York Office
 24 Fifth Avenue, Suite 1701
 New York, NY 10011

OO ORDERED

(973) 600-1724

aj@ajagnew.com

New Jersey Office
 36 Page Hill Road
 Far Hills, NJ 07931

Loretta A. Preska 11/8/21
 UNITED STATES DISTRICT JUDGE

property. The petition was granted. Mr. White suffers from a very serious neuromuscular condition, though a complete and appropriate diagnosis has not been had while he has been in DOCCS custody. In October of 2020, Plaintiffs' expert, Dr. Adam Carinci, tried to examine Mr. White at Five Points, but found him to be incontinent of feces and urine and convulsing so badly that a physical examination was impossible. With some prodding, DOCCS finally transferred Mr. White to SUNY Hospital in Syracuse, NY where he remained for several weeks while a work-up was conducted. SUNY restarted Mr. White's MWAP medications and made a preliminary diagnoses of POEM Syndrome; he was then transferred to Wende RMU for housing. Our subsequent work with an expert at the Mayo Clinic suggests that POEMS Syndrome may be a misdiagnosis, however, it is incontrovertible that Mr. White suffers from a serious, degenerative neuromuscular disorder which causes him convulsions, spasming and incontinence. He has been hospitalized on three occasions since being transferred to Wende RMU. As the Court may recall, Mr. White also has significant intellectual disabilities. I personally visited Mr. White last week at Wende RMU and was sad to find that his vocal abilities have degenerated significantly – they were not good to start.

Mr. White is set to be released on November 24, 2021. This office has arranged with DOCCS to have Mr. White transferred by ambulance to his home in Warren County, NY where we are coordinating to then have him transferred to an appropriate nursing facility. We are hopeful we will then be able to have him properly treated, but even with perfect treatment, Mr. White will not be getting better. The life expectancy suggested by SUNY was not beyond three to four years from October of 2020. Given all of the above, I respectfully request that on November 16, 2021, as a deposition in a related matter has already been arranged, that an *en bene esse* deposition also

be taken. Defendants' counsel may attend virtually if they wish to cross-examine Mr. White. It would be extremely difficult for us to produce Mr. White after his release from DOCCS' custody. He must be transported by ambulance due to his physical condition and we may be placing him in a facility out of state. I also am very concerned that his vocal abilities will continue to deteriorate. For Plaintiffs' purposes, we must record his testimony now. I am happy to place a videotape of the *de bene esse* deposition in the Court's vault or hold it in escrow at my office until such time as it may be needed in this litigation.

With thanks for the Court's continuing courtesies.

Very truly yours,

/s/ AJ Agnew

Amy Jane Agnew, Esq.